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Attorneys for Defendants  
**FRANK GRUICH, JR., and GRUICH PHARMACY SHOPPE**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID McKAY, SHEILA McKAY and THE  
ESTATE OF JOHN McKAY,

Plaintiffs,

vs.

CHRISTIAN HAGESETH, FRANK GRUICH,  
JR., GRUICH PHARMACY SHOPPE, JRB  
SOLUTIONS, INC., JRB HEALTH  
SOLUTIONS, LLC, BENJAMIN KREIS and  
GREG TUTTLE,

Defendants.

CASE NO. C-06-1377 MMC

HONORABLE MAXINE M. CHESNEY  
COURTROOM 7

TRIAL DATE: VACATED

**GRUICH DEFENDANTS' BILL OF  
COSTS**

[Filed concurrently with Affidavit of  
Dmitriy Cherepinskiy]

Judgment Entered: September 19, 2007

Defendants FRANK GRUICH, JR. and GRUICH PHARMACY SHOPPE (collectively referred  
to as "Gruich Defendants") hereby ask the Clerk to enter this bill of costs and award a taxation of costs  
as set forth herein.

This Bill of Costs is submitted pursuant to 28 U.S.C. § 1920, *Federal Rules of Civil Procedure*,  
Rule 54(d), and *Civil Local Rules*, Rule 54.

On September 7, 2007, the Court granted Gruich Defendants' Motion for Summary Judgment.  
*See*, Order, Docket No. 257. On September 19, 2007, the Court entered final judgment in favor of  
Gruich Defendants. *See*, Judgment, Docket No. 267. As the prevailing parties, the Gruich Defendants  
are now entitled to recover the costs which they incurred in defending themselves in this action.

## II. LEGAL STANDARD FOR TAXATION OF COSTS

The reimbursement of taxable expenses in federal court is governed by 28 U.S.C. § 1920, *Federal Rules of Civil Procedure*, Rule 54(d), and *Civil Local Rules*, Rule 54. 28 U.S.C. § 1920 states:

A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case; . . .

28 U.S.C. § 1920 (1)-(4). Further, *Federal Rules of Civil Procedure*, Rule 54(d) states:

(d) Costs; Attorneys' Fees.

(1) Costs Other than Attorneys' Fees. Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Such costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.

FED. R. CIV. PROC. 54(d) (emphasis added).

"[T]he costs and expenses incurred by counsel are subject to a test of relevance and reasonableness in amount. The taxation of costs lies within the trial court's discretion. [citation] The judge must look at the practical and reasonable needs of the party in the context of the litigation." *In re Media Vision Technology Secs. Litig.*, 913 F. Supp. 1362 (N.D. Cal. 1995) (citing *Thornberry v. Delta Air Lines*, 676 F.2d 1240, 1245 (9th Cir. 1982), remanded on other grounds, 461 U.S. 952 (1983)). Generally, "[a]n award of out-of-pocket expenses should be limited to those expenses customarily billed to a fee-paying client."

In *Russian River Watershed Protection Comm. v. City of Santa Rosa*, 142 F.3d 1136 (9th Cir. 1998), the Ninth Circuit held that, "Rule 54(d)(1) creates a presumption in favor of awarding costs to the prevailing party which may only be overcome by pointing to some impropriety on the part of the prevailing party that would justify a denial of costs." *Russian River*, 142 F.3d at 1144 (emphasis added). Finally, it is well-settled that "[a] party in whose favor judgment is rendered is generally the prevailing party for purposes of Rule 54(d)." *D'Hedouville v. Pioneer Hotel Co.*, 552 F.2d 886, 896 (9th Cir. 1977).

## II. SPECIFIC COSTS REQUESTED BY GRUICH DEFENDANTS

As shown below, Gruich Defendants incurred and paid costs, which are allowed by the Ninth Circuit and California District Courts, pursuant to the authority conferred by 28 U.S.C. § 1920, *Federal Rules of Civil Procedure*, Rule 54(d), and *Civil Local Rules*, Rule 54. All of these costs were actually and necessarily incurred and thus are taxable pursuant to Federal law. *See* Affidavit of Dmitriy Cherepinskiy, submitted pursuant to 28 U.S.C. § 1924 and *Civil Local Rules*, Rule 54-1(a).

### 1. FEES OF THE COURT REPORTER

Gruich Defendants seek costs associated with depositions taken in connection with this deposition. Local Rule 54-3 (c) explicitly permits recovery of the "cost of an original and one copy of any deposition (including video taped depositions) taken for any purpose in connection with case" and the "cost of reproducing exhibits to depositions . . . ." *Alflex Corp. v. Underwriters Lab.*, 914 F.2d 175, 177-178 (9th Cir. 1990) ("the cost of the original of such transcript or deposition together with the cost of one copy each where needed by counsel . . . shall be allowed"). Accordingly, Gruich Defendants request that the Court tax deposition costs as follows:

#### DEPOSITIONS

DATE	DESCRIPTION	AMOUNT
08/07/2006	Benjamin Kreis ( <i>Exh. "A"</i> to Cherepinskiy Affidavit, at p. 001)	\$596.90
08/07/2006	Gregg Tuttle ( <i>Id.</i> , at p. 002)	\$282.50
08/07/2006	Ronald Frederickson ( <i>Id.</i> , at p. 003)	\$311.00
03/26/2007	Sheila McKay (Transcript) ( <i>Id.</i> , at p. 006)	\$1,331.15
	(Video) ( <i>Id.</i> , at p. 007)	\$982.50
03/27/2007	David B. McKay, Ph.D. (Transcript) ( <i>Id.</i> , at p. 008)	\$1,375.95
	(Video) ( <i>Id.</i> , at p. 009)	\$982.50
04/17/2007	Christian Hageseth ( <i>Id.</i> , at p. 010)	\$83.70
04/19/2007	William David McKay ( <i>Id.</i> , at p. 011)	\$170.25
04/24/2007	Frank Gruich, Jr. and Ronald Frederick ( <i>Id.</i> , at p. 012)	\$940.50
04/25/2007	Frank Gruich III and Gino Agnelly ( <i>Id.</i> , at p. 013)	\$544.00
	(Video) ( <i>Id.</i> , at p. 014)	\$400.00

04/26/2007	Susan Lizana and Mary Helen Vincent	( <i>Id.</i> , at p. 015)	\$166.10
04/26/2007	Michael P. Wright	( <i>Id.</i> , at p. 016)	\$754.50
04/27/2007	Ralph Castro, M.S.	( <i>Id.</i> , at p. 017)	\$1,097.50
	Thomas Ross Brugato		
05/08/2007	Timothy Hogan	( <i>Id.</i> , at p. 018)	\$1,628.90
05/09/2007	Christopher Bentley	( <i>Id.</i> , at p. 019)	\$378.50
06/06/2007	Emmanuel Saltiel, Pharm.D.	( <i>Id.</i> , at p. 020)	\$687.16
06/08/2007	Charles L. Scott, M.D.	( <i>Id.</i> , at p. 021)	\$2,626.06
06/12/2007	Paul W. Lofholm	( <i>Id.</i> , at p. 022-023)	\$3,209.65
	Richard Abood		
06/13/2007	Thomas Garrick, M.D.	( <i>Id.</i> , at p. 024)	\$541.00
	<b>TOTAL</b>		<b>\$19,090.32</b>

Gruich Defendants also seek costs associated with two meet and confer sessions. 28 U.S.C. § 1920 (2) states that "(2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case" are recoverable. Thus, the recoverable court reporter fees are not limited to the depositions. Accordingly, Gruich Defendants request that the Court tax meet and confer transcript costs as follows:

#### **TRANSCRIPT OF MEET AND CONFER SESSION**

<b>DATE</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>
02/27/2007	Meet and Confer Conference (pro-rated among all parties) ( <i>Exh. "A"</i> to Cherepinskiy Affidavit, at pp. 004-005)	\$188.33
	<b>TOTAL</b>	<b>\$188.33</b>

## **2. FEES FOR EXEMPLIFICATION AND COPIES**

Gruich Defendants also seek costs incurred for exemplifications and copies necessarily obtained for use in this case. In pertinent part, Local Rule 54-3 (d) explicitly permits recovery of the cost of reproducing the following:

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(2) The cost of reproducing disclosure or formal discovery documents when used for any purpose in the case is allowable....

(4) The cost of reproducing trial exhibits is allowable to the extent that a Judge requires copies to be provided.

(5) The cost of preparing charts, diagrams, videotapes and other visual aids to be used as exhibits is allowable if such exhibits are reasonably necessary to assist the jury or the Court in understanding the issues at the trial.

LOCAL RULE 54-3 (d) (2), (4), (5). Further, "requests for reimbursement for photocopying charges are regularly reimbursed." *In re Media Vision Technology Secs. Litig.*, 913 F. Supp. 1362, 1367 (N.D. Cal. 1995) (emphasis added). Gruich Defendants do not seek the cost of reproducing copies of motions, pleadings, notices, and other routine case papers. Gruich Defendants seek costs appropriately recoverable pursuant to the authority set forth above.

#### **A. Formal Disclosure and Discovery Documents**

Copying documents for production in discovery is necessary and recoverable. Local Rule 54-3; *see also Tirapelli v. Advanced Equities, Inc.*, 222 F. Supp. 2d 1081, 1085 (N.D. Ill. 2002) ("Copying documents for production in discovery is necessary and recoverable."). Indeed, all tasks necessary to producing documents in electronic discovery—including scanning, imaging of documents, and bates labeling—have been held recoverable. *BDT Prods., Inc. v. Lexmark Int'l., Inc.*, 405 F.3d 415, 420 (6th Cir. 2005) (affirming the taxing of electronic scanning and imaging costs); *Karsian v. Inter-Regional Fin. Group, Inc.*, 13 F. Supp. 2d 1085, 1093 (D. Colo. 1998) (taxing costs associated with binders, index tabs, bates-labeling, and other photocopy-related costs).

At different stages of this litigation, to meet their discovery obligations (in initial and supplemental disclosures, and in responses to written discovery), Gruich Defendants had to produce to Plaintiffs a total of approximately 11,000 prescriptions. In order to produce the prescriptions, Gruich Defendants had to follow the following process: (1) copy original prescriptions on the one-by-one basis due to their non-standard size; (2) redact the copies; and (3) make copies to be produced to Plaintiffs. Gruich Defendants also made a copy of the DVD, which was produced to Plaintiffs.

Accordingly, Gruich Defendants request that the Court tax costs as follows:

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**DISCLOSURE AND DISCOVERY DOCUMENTS**

<b>DATE</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>
06/13/2006	"Glasswork" copies from original prescriptions (Dr. Hageseth) ( <i>Exh. "B"</i> to Cherepinskiy Affidavit, at p. 025)	\$406.80
06/19/2006	Copies of redacted prescriptions (in preparation for disclosure) ( <i>Id.</i> , at p. 026)	\$352.12
07/26/2006	Copies of further redacted prescriptions (for disclosure) ( <i>Id.</i> , at p. 027)	\$294.61
03/01/2007	"Glasswork" copies from orig. prescriptions (Drs. Morrow & Baron) ( <i>Id.</i> , at p. 028)	\$764.79
03/08/2007	Copies of redacted prescriptions (for production) ( <i>Id.</i> , at p. 029-030)	\$402.88
03/26/2007	"Glasswork" copies from orig. prescriptions (newly found prescr.) ( <i>Id.</i> , at p. 031)	\$245.73
04/18/2007	Copies of redacted prescriptions (for supplemental disclosure) ( <i>Id.</i> , at p. 032)	\$114.10
05/11/2007	Copy of DVD (for supplemental disclosure) ( <i>Id.</i> , at p. 033)	\$24.36
<b>TOTAL</b>		<b>\$2,605.39</b>

**B. Materials Copied for Experts**

It is well-settled that "in order to be reimbursed for photocopying costs, the expense must have been necessary and incidental to effective and competent representation." *In re Media Vision Technology Secs. Litig.*, 913 F. Supp. 1362, 1368 (N.D. Cal. 1995) (citing *Thornberry v. Delta Air Lines*, 676 F.2d 1240, 1244 (9th Cir. 1982), remanded on other grounds, 461 U.S. 952 (1983)).

In this matter, Gruich Defendants had to submit hundreds of pages of police reports, deposition transcripts, and other materials to experts. Gruich Defendants do not request to be reimbursed for absolutely all copies of materials submitted to experts. At the same time, Gruich Defendants are entitled to be reimbursed for the voluminous prescription records, which were necessarily copied for Gruich Defendants' following two experts: (1) expert pharmacist Emmanuel Saltiel, Pharm.D. and (2) rebuttal expert in the area of pharmacy laws and regulations – Benjamin Margolis, Pharm.D., J.D. In light of Plaintiffs' allegations regarding Gruich Defendants' "notice" as to "good faith examinations of patients," Dr. Saltiel and Dr. Margolis absolutely had to review the prescriptions filled by Gruich Defendants. Therefore, copying of the prescription materials for experts was "necessary and incidental" to Gruich's

effective and competent defense.

Accordingly, Gruich Defendants request that the Court tax costs as follows:

### PHOTOCOPIES OF MATERIALS FOR EXPERTS

DATE	DESCRIPTION	AMOUNT
05/17/2007	Copies of prescriptions from Drs. Hageseth, Morrow, and Baron (For review by expert Dr. Saltiel) ( <i>Exh. "B"</i> to Cherepinskiy Affidavit, at p. 034)	\$642.33
05/25/2007	Copies of prescriptions from Drs. Hageseth, Morrow, and Baron (For review by expert Mr. Margolis) ( <i>Id.</i> , at p. 035)	\$707.24
	<b>TOTAL</b>	<b>\$1,349.57</b>

### C. Trial Exhibits

To meet its obligations under the Pretrial Order of the Court, Gruich had to prepare a set of exhibits in exhibit binders to be produced to Plaintiffs. The Court required that each party prepare copies of all proposed exhibits in three-ring binders with each exhibit tabbed.

Further, Gruich Defendants' exhibits produced to Plaintiffs included copies of a DVS. The Ninth Circuit has interpreted "exemplification and copies of papers" in §1920 to include all types of demonstrative evidence, including illustrative materials such as photographs and graphic aids. *See Maxwell v. Hapag-Lloyd Aktiengesellschaft*, 862 F.2d 767, 770 (9th Cir. 1988); *Little Oil Co. v. Atlantic Richfield Co.*, 852 F.2d 441, 448 (9th Cir. 1988).

Accordingly, Gruich Defendants request that the Court tax costs as follows:

### TRIAL EXHIBITS

DATE	DESCRIPTION	AMOUNT
09/10/2007	Gruich Defendants' Exhibits ( <i>Exh. "B"</i> to Cherepinskiy Affidavit, at p. 036)	\$3,244.72
	<b>TOTAL</b>	<b>\$3,244.72</b>

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### 3. FEES FOR SERVICE OF PROCESS

Local Rule 54-3 (a) (2) explicitly permits recovery of "[f]ees for service of process by someone other than the marshal acting pursuant to FRCivP 4(c), are allowable to the extent reasonably required and actually incurred." *See also In re Media Vision Technology Secs. Litig.*, 913 F. Supp. 1362, 1371 (N.D. Cal. 1995) (stating that reimbursement for service of process is allowed under Civil. L.R. 54-3(a)).

Here, the costs of service of process with the deposition subpoena was reasonably required and actually incurred with respect to the subpoenaed witnesses as set forth below. Accordingly, Gruich Defendants request that the Court tax costs as follows:

#### SERVICE OF PROCESS FEES (DEPOSITION SUBPOENAS)

DATE	DESCRIPTION	AMOUNT
04/10/2007	Christopher Bentley ( <i>Exh. "C"</i> to Cherepinskiy Affidavit, at p. 037)	\$150.00
04/11/2007	Thomas Brugato ( <i>Id.</i> , at p. 038)	\$215.50
04/11/2007	Ralph Castro ( <i>Id.</i> , at p. 039)	\$194.50
04/11/2007	Mike Wright ( <i>Id.</i> , at p. 040)	\$323.00
04/11/2007	Tim Hogan ( <i>Id.</i> , at p. 041)	\$266.00
04/10/2007	William McKay ( <i>Id.</i> , at p. 042)	\$194.50
	<b>TOTAL</b>	<b>\$1,343.50</b>

### 4. EXPERTS AND INVESTIGATOR

"Since the Supreme Court indicated that Fed.R.Civ.P. 54 authorizes district courts to award costs not specifically enumerated in 28 U.S.C. §§ 1821, most jurisdictions have held that district courts have the discretion to reimburse consulting and expert witness fees." *In re Media Vision Technology Secs. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995) (citing *Farmer v. Arabian American Oil Co.*, 379 U.S. 227 (1964); *Thornberry v. Delta Air Lines*, 676 F.2d 1240, 1244 (9th Cir. 1982), remanded on other grounds, 461 U.S. 952 (1983)). The *In re Media Vision* Court stressed that:

In order for the district court to allow such expenses, the court must find that the expert testimony submitted was "crucial or indispensable" to the litigation at hand.

*In re Media Vision*, 913 F. Supp. at 1366 (emphasis added) (citing *United States v. City of Twin Falls, Idaho*, 806 F.2d 862, 864 (9th Cir. 1986); *Paschall v. Kansas City Star Co.*, 695 F.2d 322, 338 (8th



1 Cir.1982) reversed on other grounds 727 F.2d 692 (1984)).

2 Here, Gruich Defendants utilized the services of the following experts:

3 Expert in computer forensics, **David Gitkos** of Global Digital Forensics: The services of Mr.  
4 Gitkos were absolutely indispensable to Gruich Defendants. In the case of a suicide, the process of  
5 forensic psychiatric autopsy (to determine what it was that caused the suicide) demands that all  
6 documents written by Decedent and all his communications be examined for early signs and warnings  
7 of suicidal behavior. Mr. Gitkos analyzed the data on Decedent John McKay 2 computers (a desktop and  
8 a laptop). The data contained thousands of documents, including (1) *Word documents* - school reports,  
9 essays, debate papers and arguments, and other education-related materials and (2) America-on-line  
10 Instant Messaging ("*AOL IM*") *chats* between Decedent John McKay and his friends. Decedent's  
11 computers contain approximately *800 folders* of IM chats with his friends. Each folder contains on  
12 average *25 to 100 chats*, which amounts to approximately 20,000 chats or approximately 100,000 pages  
13 (an entire room filled with boxes) if printed. The task of reviewing this information is simply impossible  
14 without the assistance of a computer expert.

15 Through the review of the chats and Mr. Gitkos' "system keyword" search, Gruich Defendants  
16 revealed IM nicknames of four of Decedent's best friends - Mike Wright, Thomas Brugato, Tim Hogan,  
17 and Christopher Bentley. Decedent's chats with those individuals revealed invaluable information  
18 regarding his personality, addictions, and overall psychiatric makeup. This led Gruich Defendants to  
19 search for, locate, subpoena, and take depositions of Mike Wright, Thomas Brugato, Tim Hogan, and  
20 Christopher Bentley. Gruich Defendants and their expert psychiatrist Dr. Garrick then relied on those  
21 depositions in their Motion for Summary Judgment. Therefore, the services of Mr. Gitkos have been  
22 absolutely crucial and indispensable in Gruich Defendants' defense of this matter.

23 Expert psychiatrist **Thomas Garrick, M.D.**: In this case, which involves the suicide of a very  
24 young individual, the services of an expert psychiatrist have been absolutely critical. In performing his  
25 forensic psychiatric autopsy, Dr. Garrick reviewed multiple records, including the police and toxicology  
26 reports, multiple depositions, Decedent's IM chats, and other necessary materials. In fact, Dr. Garrick's  
27 opinion that the subject Fluoxetine (dispensed by Gruich Defendants to Decedent) did not cause  
28 Decedent's suicide was one of the key pieces of evidence relied on by the Court in granting Gruich

1 Defendants' Motion for Summary Judgment. Without Dr. Garrick's expert services, Gruich Defendants  
 2 would not have been able to defend this matter. Therefore, the services of Dr. Garrick have been  
 3 absolutely crucial and indispensable in Gruich Defendants' defense of this matter.

4 Expert pharmacist ***Emmanuel Saltiel, Pharm.D.***: Frank Gruich, Jr. is a pharmacist. One of  
 5 Plaintiffs' key claims against Mr. Gruich was – Professional Negligence. Faced with a professional  
 6 negligence claim, Gruich Defendants had no choice but to retain an expert pharmacist to defend  
 7 themselves from the standpoint of compliance with the standard of care. Dr. Saltiel had been deposed  
 8 and, if this action proceeded to trial, Dr. Saltiel would have testified at trial on behalf of Gruich  
 9 Defendants. Therefore, the services of expert pharmacist Dr. Saltiel have been absolutely crucial and  
 10 indispensable in Gruich Defendants' defense of this matter.

11 Expert pharmacy law expert ***Benjamin Margolis, Pharm.D., J.D.***: On May 18, 2007, when  
 12 Gruich Defendants and Plaintiffs disclosed their expert witnesses, Gruich Defendants were absolutely  
 13 surprised to find out the following: in addition to their expert pharmacist Paul W. Lofholm, Plaintiffs  
 14 designated a "pharmacy law" expert – Richard Abood. This was an unexpected turn of events for Gruich  
 15 Defendants. Based on Federal law and the Court's pretrial orders allowing for designation of rebuttal  
 16 experts, Gruich Defendants retained and designated their own pharmacy law expert – Benjamin  
 17 Margolis, Pharm.D., J.D. Without the expert assistance of Mr. Margolis, Gruich Defendants would not  
 18 have had a rebuttal expert against Plaintiffs' expert Dr. Abood. Therefore, the services of expert  
 19 pharmacist Mr. Margolis have been absolutely crucial and indispensable in Gruich Defendants' defense  
 20 of this matter.

21 Private investigator ***Thielen Investigations, Inc.***: Having revealed the names and IM nicknames  
 22 of four of Decedent's best friends - Mike Wright, Thomas Brugato, Tim Hogan, and Christopher  
 23 Bentley, Gruich Defendants faced the task of locating these individuals in order to subpoena them for  
 24 deposition. A search through publicly available sources proved futile. Gruich Defendants retained the  
 25 services of Thielen Investigations, Inc., which located Mike Wright, Thomas Brugato, Tim Hogan, and  
 26 Christopher Bentley and enabled Gruich Defendants to take their depositions. The depositions of the  
 27 above Decedent's friends were crucial to expert Dr. Garrick's psychiatric autopsy and evaluation of  
 28 Decedent's suicide. The depositions revealed invaluable information regarding Decedent's personality,

addictions, overall psychiatric makeup, and his plan to commit suicide. Therefore, the services of expert investigator Thielen Investigations, Inc. have been absolutely crucial and indispensable in Gruich Defendants' defense of this matter.

The above costs are allowable by law, and should be taxed. *See In re Media Vision*, 913 F. Supp. at 1366-1367 (allowing costs of experts and investigator); *see also In re Immune Response Secs. Litig.*, 2007 U.S. Dist. LEXIS 40017, 30-31 (S.D. Cal. 2007) (allowing reimbursement for experts and consultants).

Accordingly, Gruich Defendants request that the Court tax costs as follows:

#### EXPERTS AND INVESTIGATOR FEES

DATE	DESCRIPTION	AMOUNT
05/03/2007	Invoice for expert computer forensic services by David Gitkos of Global Digital Forensics ( <i>Exh. "D"</i> to Cherepinskiy Affidavit, at pp.043-044)	\$11,382.08
12/29/2006	Invoice for services of expert psychiatrist Thomas Garrick, M.D. ( <i>Id.</i> , at p. 045)	\$1,932.00
06/01/2007	Invoice for services of Dr. Garrick ( <i>Id.</i> , at p. 046)	\$11,440.00
08/01/2007	Invoice for services of Dr. Garrick ( <i>Id.</i> , at p. 047)	\$8,564.00
07/13/2007	Invoice for services of expert pharmacist Emmanuel Saltiel, Pharm.D. ( <i>Id.</i> , at p. 048)	\$4,650.00
05/25/2007	Retained for services of expert pharmacy law expert Benjamin Margolis, Pharm.D., J.D. ( <i>Id.</i> , at p. 049)	\$2,400.00
04/06/2007	Invoice for services of private investigator Thielen Investigations, Inc. ( <i>Id.</i> , at p. 050)	\$2,975.00
<b>TOTAL</b>		<b>\$43,343.08</b>

#### 5. TRAVEL (FLIGHT) AND LODGING EXPENSES

"The reimbursement for travel expenses, both under 28 U.S.C. §§ 1920 and Fed.R.Civ.P. 54(d), is within the broad discretion of the Court. . . . Travel reimbursements are generally allowed on a case by case approach, with each court making the decision on the basis of the circumstances and equities at hand." *In re Media Vision Technology Secs. Litig.*, 913 F. Supp. 1362, 1369 (N.D. Cal. 1995). The *In re Media* Court stressed:

1 Although not much case law is available from the Ninth Circuit,  
2 California courts seem inclined to allow travel expenses, as long as they  
are "reasonable and necessary".

3 *Id.* (emphasis added) (citing *Thornberry v. Delta Air Lines*, 676 F.2d 1240, 1244 (9th Cir. 1982),  
4 remanded on other grounds, 461 U.S. 952 (1983)).

5 Here, when traveling for multiple depositions and Court appearances, Gruich Defendants  
6 incurred costs for meals, travel agent fees, as well as for transportation to and from airports and hotels  
7 (taxi cabs, subway, and rental cars). However, for the sake of reasonableness and good faith, Gruich  
8 Defendants do not seek to be reimbursed for the costs of meals and local transportation (exceeding  
9 \$1,000). However, based on the authority set forth above, Gruich Defendants are entitled to recover the  
10 costs of flights and lodging, which were incurred while traveling to the necessary depositions and court  
11 appearances in this matter.

12 Specifically, it was mandatory for Gruich Defendants to make appearances at the 05/25/06 Status  
13 Conference, 02/21/07 Motion to Compel Hearing, and 06/29/07 Further Status Conference. The  
14 06/24/06 Initial personal meeting with client Frank Gruich, Jr. in Biloxi, MS was absolutely critical for  
15 Gruich Defendants' counsel because an attorney cannot represent a client without ever meeting the  
16 client, talking to the client, and hearing the facts from the client. Frank Gruich, Jr., a Mississippi  
17 pharmacist, was sued in California; therefore, his California counsel was clearly justified in traveling  
18 to Mississippi to meet him. This case was referred for private mediation, and Gruich Defendants had  
19 to participate in the Mediation and incur the cost of traveling to San Francisco for Mediation. Finally,  
20 all the depositions in this case were necessary, including the following: (1) the depositions of Plaintiffs  
21 in San Francisco; (2) the depositions of Frank Gruich, Jr. and his staff in Biloxi, Mississippi, (3) the  
22 depositions of Decedent's friends in Minnesota, Wisconsin, and San Francisco, (4) the deposition of Mr.  
23 Castro at Stanford, and (5) the depositions of Plaintiffs' experts in San Francisco.

24 Since counsel for Gruich Defendants is based in Los Angeles, the counsel had to incur necessary  
25 travel expenses during the course of this litigation, and the counsel is now entitled to be reimbursed for  
26 those travel expenses. When California Plaintiffs filed this Diversity action against a Mississippi  
27 pharmacist, Texas-based internet pharmacy, and a Colorado physician, Plaintiffs assumed the risk that  
28 the counsel for Gruich Defendants may not be based in San Francisco. Plaintiffs must reimburse Gruich.

**FLIGHT AND LODGING EXPENSES**

<b>DATE</b>	<b>DESCRIPTION</b>	<b>AMOUNT</b>
05/26/2006	Status Conference (round-trip flight from Los Angeles to San Francisco) ( <i>Exh. "E"</i> to Cherepinskiy Affidavit, at p. 051)	\$488.60
06/24/2006	Initial personal meeting with client Frank Gruich, Jr. in Biloxi, MS (round-trip flight from Los Angeles to Gulfport, MS through Atlanta, GA) ( <i>Id.</i> , at p. 052)	\$1,639.20
08/07/2006	Depositions of Benjamin Kreis, Gregg Tuttle, and Ronald Frederickson in Las Vegas, NV (round-trip flight from Los Angeles to Las Vegas, NV) ( <i>Id.</i> , at p. 053)	\$278.60
02/21/2007	Hearing on Plaintiffs' Motion to Compel Gruich Defendant to Provide Further Responses to Written Discovery (round-trip flight from Los Angeles to San Francisco) ( <i>Id.</i> , at p. 054)	\$268.80
03/26/2007 - 03/27/2007	Depositions of Plaintiffs Sheila McKay and David McKay, Ph.D. in San Francisco	
	- Round-trip flight from Los Angeles to San Francisco, flight changed from 03/14/2007) ( <i>Id.</i> , at p. 055)	\$268.80
	- Lodging at Hyatt Hotel (one night) ( <i>Id.</i> , at p. 056)	\$289.28
04/23/2007 - 04/26/2007	Depositions of Frank Gruich, Jr., Ronald Frederickson, Frank Gruich, III, Gino Agnelly, Susan Lizana, and Mary-Helen Vincent in Biloxi, MS	
	- Flight from Santa Ana, CA to Gulfport, MS through Houston, TX ( <i>Id.</i> , at p. 057)	\$680.59
	- Lodging at Beau Rivage Hotel in Biloxi, MS (three nights) ( <i>Id.</i> , at p. 059)	\$610.96
	- Flight from Gulfport to Santa Ana via Houston ( <i>Id.</i> , at p. 057)	\$380.01
04/26/2007 - 04/27/2007	Depositions of Michael Wright, Ralph Castro, M.S., and Thomas Brugato in San Francisco and Stanford	
	- Round-trip flight from Los Angeles to San Francisco ( <i>Id.</i> , at p. 057)	\$311.80
	- Lodging at Courtyard Marriott Hotel (Los Altos) ( <i>Id.</i> , at p. 058)	\$234.99
05/07/2007 - 05/09/2007	Depositions of Tim Hogan (in St. Paul, MS) and Christopher Bentley (Madison, WI)	
	- Flight from Los Angeles to Twin Cities, MN and next day flight from Twin Cities, MN to Madison, WI (two flights) ( <i>Id.</i> , at p. 060)	\$1,059.80
	- Lodging at Hilton Hotel in Minneapolis, MN ( <i>Id.</i> , at p. 061)	\$219.80
	- Lodging at Crowne Plaza Hotel in Madison, WI ( <i>Id.</i> , at p. 062)	\$186.73
	- Flight from Madison, WI to Los Angeles through Chicago, IL ( <i>Id.</i> , at p. 060)	\$437.80

06/08/2007	Deposition of Charles L. Scott, M.D. in San Francisco (round-trip flight from Los Angeles to San Francisco) ( <i>Id.</i> , at p. 063)	\$302.80
06/12/2007 - 06/14/2007	Depositions of Paul W. Lofholm and Richard Abood, and Mediation before Jerry Spolter, Esq. in San Francisco - Round-trip flight from Los Angeles to San Francisco ( <i>Id.</i> , at p. 064)	\$302.79
	- Lodging in San Francisco at Serrano Hotel -- a Kimpton Hotel (hotel paid through the travel agent) (two nights) ( <i>Id.</i> , at p. 063)	\$534.41
06/29/2007	Further Status Conference (round-trip flight from Los Angeles to San Francisco) ( <i>Id.</i> , at p. 064)	\$302.80
	<b>TOTAL</b>	<b>\$8,798.56</b>

The above costs are reasonable, allowable by law, and should be taxed. *See In re Media Vision*, 913 F. Supp. at 1369; *see also In re Immune Response Secs. Litig.*, 2007 U.S. Dist. LEXIS 40017, 30-31 (S.D. Cal. 2007) (allowing reimbursement for travel expenses).

#### 6. TELEPHONE EXPENSES

It is well-settled that "[r]easonable out-of-pocket expenses, such as telephone costs, incurred by the attorney, which are normally charged to the fee-paying client, in the course of providing legal services, are recoverable." *In re Media Vision Technology Secs. Litig.*, 913 F. Supp. 1362, 1368-69 (N.D. Cal. 1995) (emphasis added); *see also In re Immune Response Secs. Litig.*, 2007 U.S. Dist. LEXIS 40017, 30-31 (S.D. Cal. 2007) (allowing reimbursement for telephone expenses). Accordingly, Gruich Defendants request that the Court tax costs as follows:

#### TELEPHONE EXPENSES

DATE	DESCRIPTION	AMOUNT
04/16/2007	Telephone Conference / Hearing with the Court regarding Gruich Defendants' Motion to Continue Trial and Associated Dates ( <i>Exh. "F"</i> to Cherepinskiy Affidavit, at pp.065 - 067)	\$73.00
	<b>TOTAL</b>	<b>\$73.00</b>

#### 7. COMPUTERIZED LEGAL RESEARCH

In *In re Media Vision*, the Court granted the request for computerized legal expenses in full and stressed that "Lexis is an essential tool of a modern efficient office. As such, it saves lawyers' time by increasing the efficacy of legal research....." *In re Media Vision Technology Secs. Litig.*, 913 F. Supp. 1362, 1371 (N.D. Cal. 1995) (quoting *Robinson v. Ariyoshi*, 703 F. Supp. 1412, 1436 (D.Haw. 1989),

reversed on other grounds, 933 F.2d 781 (9th Cir. 1991)); *see also In re Immune Response Secs. Litig.*, 2007 U.S. Dist. LEXIS 40017, 30-31 (S.D. Cal. 2007) (allowing reimbursement for computerized legal research expenses). Accordingly, Gruich Defendants request that the Court tax costs as follows:

#### COMPUTERIZED LEGAL RESEARCH

DATE	DESCRIPTION	AMOUNT
06/30/2006	Lexis Legal Research ( <i>Exh. "G"</i> to Cherepinskiy Affidavit, at p.068)	\$204.72
04/30/2006	Lexis Legal Research ( <i>Id.</i> , at p. 068)	\$107.50
05/31/2006	Lexis Legal Research ( <i>Id.</i> , at p. 068)	\$4.34
03/31/2006	Lexis Legal Research ( <i>Id.</i> , at p. 069)	\$163.52
07/31/2006	Lexis Legal Research ( <i>Id.</i> , at p. 069)	\$63.72
<b>TOTAL</b>		<b>\$543.80</b>

#### 8. MEDIATION

In *In re Immune Response Secs. Litig.*, 2007 U.S. Dist. LEXIS 40017 (S.D. Cal. 2007), the Court found that the mediation expenses were both "reasonable and necessary", and allowed reimbursement for the mediation expenses *Id.* at 31-32. The Mediation cost set forth below is reasonable, allowed, and should be taxed. In addition, this case was referred for private mediation, and Gruich Defendants had to participate in the Mediation and incur the cost.

#### MEDIATION COST

DATE	DESCRIPTION	AMOUNT
06/14/2007	Mediation with Jerry Spolter, Esq. of JAMS ( <i>Exh. "H"</i> to Cherepinskiy Affidavit, at p.070)	\$2,608.33
<b>TOTAL</b>		<b>\$2,608.33</b>

### III. SUMMARY OF COSTS REQUESTED BY GRUICH DEFENDANTS

#### 1. Fees of the Court Reporter

Depositions	\$19,090.32
Transcript of Meet and Confer Session	\$188.33

#### 2. Fees for Exemplification and Copies

A. Disclosure and Discovery Documents	\$2,605.39
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1	B. Materials Copied for Experts	\$1,349.57
2	C. Trial Exhibits	\$3,244.72
3	3. Fees for Service of Process	\$1,343.50
4	4. Expert and Investigator Fees	\$43,343.08
5	5. Travel (Flight) and Lodging Expenses	\$8,798.56
6	6. Telephone Expenses	\$73.00
7	7. Computerized Legal Research	\$543.80
8	8. Mediation Cost	\$2,608.33
9	<b>TOTAL</b>	<b>\$83,188.60</b>

#### 10 **IV. CONCLUSION**

11 Based on the foregoing, Defendants Frank Gruich, Jr. and Gruich Pharmacy Shoppe respectfully  
 12 request that the Clerk tax costs as enumerated above and award \$83,188.60 to Defendants Frank Gruich,  
 13 Jr. and Gruich Pharmacy Shoppe. As indicated in Affidavit of Dmitriy Cherepinskiy, submitted  
 14 pursuant to 28 U.S.C. § 1924 and *Civil Local Rules*, Rule 54-1(a), the costs set forth above are correctly  
 15 stated, were necessarily incurred, and are allowable by law.

16 DATED: September 21, 2007 CARROLL, KELLY, TROTTER, FRANZEN & McKENNA

17 By: /s/ Dmitriy Cherepinskiy  
 18 MARK V. FRANZEN  
 19 DMITRIY CHEREPINSKIY  
 20 Attorneys for Defendants  
 21 FRANK GRUICH, JR., and  
 22 GRUICH PHARMACY SHOPPE  
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